

***United States Court of Appeals
for the Second Circuit***



**SUPPLEMENTAL
APPENDIX**

75-7649

United States Court of Appeals

For the Second Circuit

MARVIN STERN,

*Plaintiff-Appellee
and
Cross-Appellant,*

against

SATRA CORPORATION and
SATRA CONSULTANT CORPORATION,

*Defendants-Appellants
and
Cross-Appellees.*

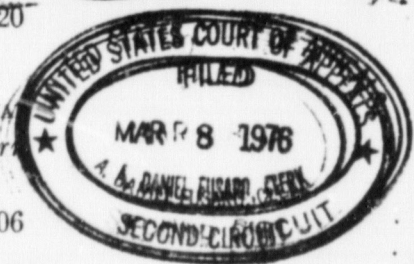
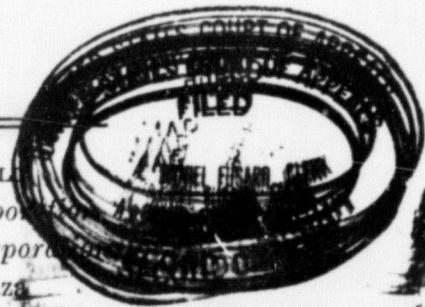
Appeal from a Judgment of the United States
District Court for the Southern District of New York

SUPPLEMENT TO JOINT APPENDIX

Pages 1114A to 1192A

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1 4hpd

Stern-cross

278

2 Exhibit B, the August 25th memorandum attempts to cover what
3 you just said?

4 THE WITNESS: No, sir. The amounts relative to
5 IBM and Stromberg, are verbal.

6 Q That document provides, doesn't it, in the second
7 sentence of paragraph 1, which I will read, if I may, "Each
8 company selected to be governed by this agreement will be
9 agreed upon in separate memoranda and a proportionment of
10 income therefrom will be specified thereon."

11 Was such a memorandum or were such memoranda
12 ever prepared?

13 A No.

14 Q This document, Plaintiff's B, contemplated a
15 formal agreement being reached, did it not?

16 MR. HELLERSTEIN: I object to the form of the
17 question. Directed to --

18 THE COURT: That seems to be a legal conclusion.
19 You are free to argue what paragraph 6 says. I will sustain
20 that.

21 MR. HILL: May I ask the witness what he thinks
22 the paragraph means?

23 THE COURT: You can ask him what his understanding
24 was.

25 A My understanding was, as an example, I was --

1 10 rgmch

Oztemel-cross

669

2 and then we talked about other things, but not his company
3 life or any other kind of life.

4 Q In other words, the first time you heard anything
5 of this suggestion that I put in my previous question
6 was when you heard Mr. Giffen testify here?

7 A I'm sorry, I must correct that because there came
8 a time when Mr. Stafford and I had luncheon at the Harvard
9 Club, Yale Club, one of those, when he told me that he
10 was resigning from IBM and that he was looking for a
11 situation.

12 Q Was his resignation voluntary?

13 A As far as I know, yes, sir.

14 Q He was then looking. What time was that?
15 What period of time was that, Mr. Oztemel?

16 A I'm sorry.

17 Q That was the first you had any inkling of the
18 desire on Mr. Stafford's part for one reason or another
19 to move away from IBM to some other company?

20 A As far as I can remember, yes, sir.

21 Q So when you and Mr. Giffen and Mr. Stafford
22 had this conversation in London concerning Dr. Stern, you
23 had no idea whatever that Mr. Stafford was thinking that
24 he might want to leave IBM?

25 A As far as I can remember now, I did not.

1116, A

MOTION BY PLAINTIFF TO SUPPLEMENT
AMENDED COMPLAINT

11171A

Delete Paragraph 1(b)

Paragraph 1(c) - Line 2 : Delete reference to IBM
WORLD TRADE CORPORATION

Paragraph 4 is to be amended as follows (added allegations are underlined):

4. On or about September 1, 1971, plaintiff and defendant SATRA CORPORATION entered into a written agreement, whereby plaintiff was to receive fifty (50%) per cent of the gross revenues received by defendant SATRA CORPORATION from IBM WORLD TRADE CORPORATION, after deduction of certain expenses as provided. The agreement provided that retainers received by defendant SATRA CORPORATION from IBM WORLD TRADE CORPORATION were not to be subject to any deduction for expenses. Advances against future commissions were treated by the parties as retainers.

Delete paragraph 18 and add new paragraphs 18, 18A, 18B and 18C.

18. Additional sums have been paid by IBM WORLD TRADE CORPORATION to defendant SATRA CONSULTANT CORPORATION, under the agreements between them alleged in paragraphs 8, 9 and 10 hereof and under an agreement between IBM WORLD TRADE CORPORATION and defendant SATRA CONSULTANT CORPORATION effective as of September 1, 1973, terminating and replacing all the earlier agreements. A copy of the September 1, 1973 agreement is attached hereto, marked Exhibit "6" and made a part hereof. The schedule below sets out the sums paid by IBM WORLD TRADE CORPORATION to defendant SATRA CORPORATION or SATRA CONSULTANT CORPORATION, the nature of the payments under the agreements between them, whether under the agreements between defendant and plaintiff expenses are to be deducted and, if so, how much, and plaintiff's share of each such payment, no part of which has been paid to plaintiff.

Date of Payment by IBM to Satra	Nature of payment	Amount of payment	Amount of any expenses to be deducted	Plaintiff's 1/2 share
Mar.- Nov.1973	Commissions on IBM Sales	\$ 72,716	\$29,086 (40%)	\$ 21,815
Sep.'73- Mar.'74	Monthly payments under Sep. 1973 agreement	182,119	-	91,059*
		<u>\$254,835</u>		<u>\$112,874*</u>

18A. In addition, under said agreement of September 1, 1973, sums will be due and payable from IBM WORLD TRADE CORPORATION to defendant SATRA CONSULTANT CORPORATION as shown below, of which plaintiff is entitled to half.

Period of Payment	Amount per month	Description provided by Agreement	Plaintiff's 1/2 share
(1) 33 payments, Apr.'74-Dec.'76	\$16,667	"monthly sum"	\$274,989*
(2) 34 payments, Apr.'74-Jan.'77	9,350	"monthly advance"	158,950*
			<u>\$433,939*</u>

*If the April, 1974 payment from IBM WORLD TRADE CORPORATION to SATRA CONSULTANT CORPORATION (\$26,017) is included in the computation of the share presently due and owing by defendant SATRA CORPORATION to plaintiff, the sum of plaintiff's one-half share should be increased from \$112,874 to \$125,882, and the sum of the share to which plaintiff will in the future become entitled (as alleged in paragraph 18A above) should be decreased by a like amount, from \$433,939 to \$420,931.

18B. Said agreement continues in effect, and said payments of \$16,667 per month continue to be due and payable, unless either IBM WORLD TRADE CORPORATION or defendant SATRA CONSULTANT CORPORATION elects to terminate on February 1, 1977, or any February 1 thereafter. Plaintiff is entitled to one-half of any such continued payments to SATRA CONSULTANT CORPORATION.

18C. Said agreement of September 1, 1973 provides for additional revenues for defendant SATRA CONSULTANT CORPORATION in the form of "transaction fees" and barter activities, and plaintiff is entitled to one-half of said revenues after deduction of certain expenses provided by plaintiff's agreement with defendant.

Add the underlined phrase to Paragraph 19

19. Plaintiff has a valid and binding agreement with the defendant SATRA CORPORATION and a valid and binding guarantee by defendant SATRA CONSULTANT CORPORATION of said agreement, in regard to monies paid and to be paid by IBM WORLD TRADE CORPORATION to defendants in connection with purchases of data processing equipment and office products to the Union of Soviet Socialist Republics.

1123 A

Delete Paragraphs 21 through 23

Prayers for relief : subparagraph (a), line 2 change
"have" to "here".

Add a new subparagraph (e), as follows:

(e) that plaintiff have judgment against
defendants, as follows:

- (1) \$12,500 as alleged in paragraph
16 and 17 hereof, and
- (2) \$112,874*as alleged in paragraph
18 hereof, or
- (3) \$125,374*in all, plus
- (4) interest

*See footnote to paragraphs 18 and 18A hereof.

Prayers for relief (cont'd)

Change subparagraph (e) to subparagraph (f), delete words in brackets and add the words underlined:

(f) That the Court declare that there is due and owing by defendants SATRA CORPORATION and SATRA CONSULTANT CORPORATION to plaintiff fifty (50%) per cent of all monies [heretofore and] hereafter received by said defendants from IBM WORLD TRADE CORPORATION under the aforementioned agreement between it and defendant SATRA CONSULTANT CORPORATION, as alleged in paragraphs 18A*, B and C hereof.

*See footnote to paragraphs 18 and 18A hereof.

Prayers for relief (cont'd)

Delete paragraphs (f) and (g) and add a new paragraph

(g) as follows:

(g) That the Court retain jurisdiction in the event proceedings become necessary or desirable to carry out the judgment.

1127A

Paragraph (h) is to be retained as the last paragraph
of the prayers for relief.

1 6jgd

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2 tell them are in the case.

3 (In open court, jury present.)

4 THE COURT: Ladies and gentlemen, the floor is
5 about to be given to counsel to address you. I just want to
6 remind you that, as I told you at the outset of the case,
7 whatever Mr. Hill or Mr. Hellerstein have to say about the
8 case, and I have no reason to believe they won't be accurate,
9 their statements do not constitute evidence. You've heard
10 all the evidence now.

11 The purpose of their statements is to give you
12 their point of view so you can put everything in perspective
13 and, when the time comes, decide the case for yourselves.

14 Mr. Hill.

15 MR. HILL: Your Honor, ladies and gentlemen,
16 this has been kind of a long week and I'm sure that you are
17 as glad as we are that it has finally reached this point,
18 where we will put to you the questions which we think have
19 been raised in this matter.

20 I just want to take this opportunity to thank
21 you for your attention. It is not easy in these courtrooms
22 to stay awake. With all due respect to the federal court-
23 house, the facilities are something less than adequate for
24 people to try to pay attention, which I know you all have
25 tried to do.

7jqd

824

Your job, as his Honor will tell you, is to resolve the factual disputes between the parties, and those factual disputes, we submit, are relatively simple in this case.

The factual issues themselves are relatively simple.

They will be resolved by you from what you remember of the testimony, from what you remember of the exhibits, the documents that have been offered in evidence. And, as his Honor will tell you, that testimony and those exhibits will be made available to you in the course of your deliberations.

Mr. Hellerstein and I, will, during the course of the summation refer to the testimony and the exhibits. I will try, where I think it is appropriate, to actually read some small portions of the testimony.

Mr. Hellerstein and I, I don't think are going to disagree too much on what was proved and what was not proved, what the witnesses said or did not say, and to the extent we disagree, that's for you to resolve based, as I say, on what you recollect and, of course, from the exhibits themselves.

What is more important, I think, Mr. Hellerstein and I will disagree on the inferences, on the conclusions,

1 8jgd

2 that you should draw from the testimony that you heard and
3 from the exhibits that you've had an opportunity to read.
4 And I think in that regard I can only say this:

5 You will have to draw, and I am sure you will
6 draw, the kind of conclusions and make the inferences, if
7 you like, that are reasonable to you in the light of your
8 own experience in everyday living. There is nothing very
9 magic about what goes on in a courtroom, because when the
10 case is put to a jury it is put to jurors like yourselves
11 who come out of all walks of life and who have to bring to
12 the factual issues their own experience, and you are going
13 to have to decide what is reasonable here.

14 There are disputes between the parties as to
15 who said what to whom and who did what, based on certain
16 conversations, and I think you'll have to resolve for your-
17 self what would a reasonable person have done, given this
18 conversation, given this document, given this set of circum-
19 stances. And that, I think, is how this case is going to
20 be resolved.

21 (Continued on page 826.)
22
23
24
25

1 jgmch

2 Now, what is this case about? I would like to
3 take you back, if I may, to the statements that were made
4 at the opening of this trial by counsel, by Mr. Hellerstein
5 on behalf of Dr. Stern. What did he tell you that this case
6 was about?

7 In his opening, when he was describing what
8 happened after the August 31st contract was signed, he
9 said, and I am now quoting:

10 "They," referring to Satra, "decided that this
11 contract," the IBM contract, which, parenthetically,
12 had not been signed on August 31st, "could be worth
13 hundreds of millions of dollars and why did they need this
14 partner, and they reneged." They said, "Dr. Stern, we
15 don't owe you." I know I didn't give you the words and
16 the amount of that, but that's what it comes to.

17 Ladies and gentlemen, what we are asked to believe
18 is also contained in a statement that Mr. Hellerstein made
19 at Page 281 of the record, when he said, in connection
20 with an objection, "Satra made millions without Dr. Stern
21 knowing it."

22 Now, ladies and gentlemen, what are the facts in
23 this regard in this record, in this case? It seems to
24 me the facts are pretty clear. Dr. Stern was not treated
25 unfairly, as he would have it. He was not cheated. You

1 2 jgmch

2 have heard the testimony here that when Mr. Oztemel
3 and his people discovered that Dr. Stern had not had the
4 influence with IBM which he purported to have, he was
5 offered a hundred thousand dollars. He had already
6 received \$12,500.

7 Now, I suggest to you that that is simply not
8 unfair.

9 Now, his Honor will charge you that you don't
10 have an issue before you in respect to damages in this
11 case. It is not up to you to make a determination as to
12 whether Dr. Stern was offered an adequate amount of money
13 as a finders fee. The issue before you is was there a
14 contract on August 31st or whether there was not.

15 Now, I would like to come back to this business
16 of Satra making hundreds of millions of dollars, or
17 making millions of dollars that Dr. Stern didn't know
18 about. Does that accord with the facts, and was he
19 entitled to fifty per cent of these millions, based on his
20 own statement of what he was supposed to do here to
21 entitle him to compensation?

22 Now, there has been an interesting change in
23 Dr. Stern's contention, which I will come back to, in
24 this regard as we go through the case and as we progress
25 through the trial.

1 3 jgmch

2 At the opening, at Counsel's opening, when there
3 was a reference made to the August 31st agreement and
4 there was an attempt to justify Dr. Stern's claim for
5 compensation under that agreement, there was a statement
6 made as to what Dr. Stern was supposed to do under that
7 agreement to entitle him to fifty percent of millions of
8 dollars, because that's what the claim here is, what was
9 said. And I am quoting from what Mr. Hellerstein had
10 to say:

11 "Well, together we will search this document out
12 and find out what Dr. Stern had to do beyond helping to in-
13 troduce the parties together, and we will urge you that there
14 was nothing more that he had to do."

15 So that what the claim was when we started this
16 case was that Dr. Stern was to do no more than introduce
17 IBM to Satra and for that he was to be entitled to fifty
18 percent of millions of dollars.

19 If Satra had made millions of dollars, I could
20 understand why we have all been here for six days. The
21 fact is, on an exhibit offered by the plaintiff in this
22 case, Satra has been paid the magnificent sum of \$95,000
23 under the 1971 contract with IBM. As for this, what is the
24 claim? And I might say, by the way, that in August and
25 in November that nobody had any idea that even this much

1 4 jgmch
2 money would have been paid under the 1971 agreement.
3 There were additional payments under an agreement, and this
4 is also referred to in that same exhibit, under a 1973
5 contract, and even that sum of money comes to an additional
6 \$180,000.

7 Now this, ladies and gentlemen, is made in the
8 context -- and this really brings me to what at least
9 we consider to be -- when I say "we," what the defendants
10 consider to be one, really two, although there are three
11 issues -- but certainly one of the two key issues in the
12 case: Was there an agreement on August 31, 1971?

13 Now, that issue really turns on a factual
14 question, and that factual question is: Had Satra, acting
15 through Mr. Oztemel, Mr. Mott, Mr. Hermann, those are all
16 names that you remember, reached an agreement on the
17 expenses that were going to be charged against Dr.
18 Stern's -- or I should say, the expenses to be charged
19 against the monies received from IBM before Dr. Stern got
20 to share fifty-fifty? You will all remember this testimony,
21 but I want to go back to it.

22 It is our position, and I think his Honor will
23 charge, that unless the parties had reached full and total
24 agreement on the subject of how the expenses were to be
25 charged under the August 31st agreement, in other words,

1 5 jgmch

2 unless Dr. Stern and Satra acting through its people had
3 reached total agreement with respect to how those
4 expenses were to be shared, there simply was no agreement.

5 Now, I don't ask you to recollect any testimony
6 other than that given by Dr. Stern on this issue. Mr.
7 Mott and Mr. Oztemel were perfectly clear when they said
8 there was no agreement. Now, they are interested parties;
9 we recognize that. I don't suggest for a minute that you
10 do anything other than believe them. But I recognize that
11 they are interested parties and you can resolve this
12 question, this factual question, for yourselves based
13 solely on Dr. Stern's testimony.

14 Why can you do it? How can you do it? There
15 are two separate place in the record. One of them runs
16 from about Page 80 through Page 95, and then there is
17 another section at Page 330, 331, where this very issue
18 is raised in the testimony, and it is perfectly clear that
19 what Dr. Stern testified to is true.

20 And what did he testify to? You may recall that
21 he testified that on the 31st he had a discussion with
22 Mott and with Hermann, the lawyer and the accountant for
23 Satra. They told him that it was their understanding
24 that these expenses were to be cumulative, that they were to
25 be accumulated through the period of the contract, and when

1 6 jgmch

2 revenues were realized, the cumulative expenses were to
3 be charged.

4 Dr. Stern took the position with them at this time,
5 as he has done in this courtroom, that, no, that wasn't
6 the way the agreement was to be done, that he was only to be
7 charged expenses on the schedule if there were revenues
8 realized in that year, and as you pass out of a year
9 in which no revenues have been realized, then the expenses
10 for that year were to be ignored, wholly apart from the
11 reasonableness of that kind of agreement, and he went on
12 to say that the meeting with Mott and Hermann was
13 adjourned without an agreement having been reached, that
14 he had a further discussion with Oztemel that afternoon,
15 the subject was not discussed, and his very testimony is that
16 they, referring presumably to Mott, Hermann and/or
17 Oztemel, had added the schedule to the agreement without his
18 having agreed with them as to what it meant.

19 Now, if you believe Dr. Stern and his testimony
20 on this issue, I would urge you that there simply cannot
21 be an agreement. Certainly, nothing could have been more
22 material than this question of the expenses. You heard
23 Mr. Oztemel testify to the effect that, in the course of
24 conversations with his people, where they were trying to
25 estimate what it was going to cost to service an agreement

1 7 jgmch

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2 with IBM, that in their own conversations they said,
3 "Look, IBM is of the size it is." I'm sure I don't have to
4 tell you how big IBM is, "when IBM starts to send people
5 into Russia," and you remember the listing of the various
6 exhibits of the things that Satra was supposed to do,
7 it becomes very clear that, again viewing this from the
8 standpoint of reasonableness, that when Mr. Oztemel testified
9 to the effect that their estimate was a hundred thousand
10 dollars a year, that that was a reasonable estimate of the
11 expenses, and indeed that's what shows in the schedule
12 attached to what in this case is the famous Plaintiff's
13 Exhibit C, called the proposal letter.

14 Now, Dr. Stern has testified, notwithstanding
15 all of this, he had an agreement, that the parties had a
16 meeting of the minds. What, what is the history of this
17 Stern-Satra relationship? It has been testified to at
18 great length. The August 13th document, the August 25th
19 document, the August 31st document, followed by the
20 September 3rd document, as to which there has been much
21 testimony, followed by a contract prepared a draft of a
22 contract prepared by Dr. Stern's lawyer, Mrs. Hauser.

23 The history of this relationship was one of
24 proposal and counterproposal. I think that that's what comes
25 out of all of this testimony. Certainly, it is clear that

1 8 jgmch

2 even Dr. Stern, although there has been some testimony
3 from him on the issue, never himself thought he had an
4 agreement prior to August 31st, and you may remember his
5 deposition testimony in that regard.

6 This was a constant process of back and forth
7 and back and forth, and I think that given the testimony
8 as to what happened on the 31st, then the testimony of
9 Mr. Mott as to what happened on September 3rd when he
10 prepared that next draft, the exhibit number of which I have
11 now forgotten, you may recall there was testimony from Dr.
12 Stern that this represented renegotiation of the agreement.
13 It cannot be renegotiation of the August 31st agreement,
14 we submit, if it is a fact that on August 31st the parties
15 had not come to a complete understanding with respect to what
16 was to be done with these expenses and how they were to
17 be charged.

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1 1 gmch

2 Again, the September 3rd contract is simply
3 a natural result, if you like, of the continuing discussions
4 between these parties, between the Satra people, various
5 of the Satra people, and Dr. Stern, and it cannot be, I think,
6 in any reasonable way, considered to be renegotiation.

7 Indeed, you might ask yourself this question:
8 If Dr. Stern was as exercised, was as mad, if you like,
9 at Mr. Mott, as he tells us -- you may recall his testimony
10 that he suggested to Mr. Mott that he was renegotiating,
11 that he had no right to do this, and that he was, as I
12 say, mad about it, and that Mott's reaction was to,
13 I think, "charge out of the room without saying anything."
14 there is no testimony in this record that on
15 September 3rd, or at any time, until a much later period
16 of time -- I believe it's late October or November --
17 did Dr. Stern ever raise the question with Mr. Oztemel.

18 Now, I put it to you, ladies and gentlemen:
19 Is it reasonable if what you thought you had on August 31st
20 was a contract in which you had a possibility of receiving
21 millions of dollars and you had been told by company
22 counsel, the company's lawyer, that the agreement wasn't
23 what you thought it was, would you have waited, would
24 anyone have waited for two months before going to the boss,
25 Oztemel? I submit to you that Dr. Stern didn't think he

1 2 rgmch

2 had an agreement at all on September 31. or otherwise
3 he would have acted differently than he had.

4 Now, again, I think you must ask yourself this
5 qu-stion, again trying to determine whether there was
6 an agreement here, again: Is it reasonable? There has
7 been much testimony in this record about a partnership,
8 fifty percent and so on and so on and so on. Whatever that
9 was, and it is whichever you believe.

10 Let's again go back to the question of expenses.
11 Is it reasonable to believe that, faced with the prospects
12 of millions of dollars of profits of income, that Satra
13 would have agreed, or indeed I will put it to you another
14 way: That Dr. Stern wouldn't even have proposed
15 that he, in effect, get fifty percent off the top, because
16 that's really what he is talking about; he is talking about
17 fifty percent off the top.

18 Now, reasonable, experienced business people just
19 don't make those kinds of commitments, and indeed the
20 testimony here is that Satra didn't make that kind of
21 commitment, and on Dr. Stern's own testimony they didn't
22 make that kind of a commitment, because he said there
23 was not an agreement on this issue.

24 Now, I suggest to you that there is no partner-
25 ship indeed that provides that one partner gets fifty

1 3 rgmch

2 percent of the gross, pays none of the expenses, and the other
3 partner gets fifty percent of the gross but he bears
4 all the expenses, whatever they may be.

5 I suppose the issue here is not whether you think
6 it's fair or unfair. The issue on this particular point is
7 whether or not there was, in fact, an agreement. I
8 submit to you the undisputed testimony of Dr. Stern
9 himself; ignore if you like, Mr. Mott's testimony,
10 Mr. Oztemel's testimony. There was simply no agreement
11 that gives rise to any rights on the part of Mr. Stern.

12 Let me turn now to the second major issue in the
13 case. This is a somewhat more complex issue and it
14 requires reference to, I think, something more of the
15 record than really the -- I guess it isn't more than ten
16 or fifteen pages that I refer to out of a record which now
17 must run close to a thousand typed pages.

18 The defendants took the position at the outset of
19 this trial that Dr. Stern was able to get Mr. Oztemel
20 to sign the document dated August 31st because Oztemel
21 and his people at that point in time believed that Stern
22 was able to bring to Satra IBM as a client. Now, you are
23 going to have to determine, if, but only if, you decide
24 that there was an agreement between the parties -- you
25 will only get to this question in your deliberations if you

1 4 rgmch

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2 decide there was actually an agreement reached between the
3 parties. You are then going to have to decide, based
4 on this entire record of all the documents, the direct exam-
5 ination, the cross-examination, whether in your mind,
6 based on that testimony, it is reasonable that Satra so
7 believed. Nobody is asking you to believe, and certainly
8 we do not ask you to believe anything that is not reasonably
9 based on your own everyday experiences.

10 Now, let's start at the beginning, and I will
11 come to the change in the plaintiff's position as we went
12 through the trial. He said at the outset, and you will
13 remember that I just read that he was to get fifty percent
14 of the profits, fifty percent of the revenues simply for
15 introducing IBM; no more. When that was finished, he had
16 no obligations. Now, what is the testimony that comes
17 from the Satra people? The satra people have testified, and
18 every one of them who has taken the stand has testified
19 that they had a belief, notwithstanding some of them said
20 they were skeptical, notwithstanding that some of them
21 said they said they didn't think it would ever happen --
22 indeed, Dr. Stern said that. He was told that repeatedly.
23 "We don't think you can do it. We don't think IBM will
24 deal with us. They have never dealt with an intermediary
25 before." That kind of testimony.

5 rgmch

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But each and every one of these people have testified that Stern himself told them repeatedly that he could produce, and indeed when the going got rough on or around August 31st, you may recall -- you may recall, for example, the conversation with Mott in the taxicab going from LaGuardia Airport to Kennedy. That conversation and that testimony was to the effect, and this is repeated, in substance, in other testimony from other witnesses. Mott says it happened on other occasions, but that testimony was that "if you don't make a deal with me, there will be no deal with IBM. I am going to walk away. I am going to go back to Los Angeles and you won't be able to make the deal with IBM."

Is it reasonable that Satra would believe this? Well, let's look at in this context, and let's go back now a little bit to the change in Dr. Stern's position as the trial went forward after the opening.

There was much testimony here about Dr. Stern's experience in scientific technology and the like.

It's not my purpose here to tell you, and indeed I will not tell you, that Dr. Stern had no such experience in the area in which he said he had experience. He is a highly educated, highly articulate man with considerable experience in his own field. But what was that field?

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2 It's not completely clear on the record what that field was,
3 but it's completely clear on the record what that field
4 was not. He didn't know anything about Russia. He had
5 never been involved in business transactions with Russia,
6 and he didn't know anything about IBM equipment.

7 That testimony, I think, is clear. It's clear
8 in his testimony and it's clear in Mr. Stafford's
9 testimony. Indeed, I suppose, as Mr. Stafford put it
10 when he was talking about what they were going to do with
11 the Satra personnel after the contract was signed in late
12 September between IBM and Satra, that Dr. Stern would be
13 in a position to go to an advanced IBM class on their
14 equipment which Mr. Giffen couldn't handle; he was going to
15 go to the next class below that. But that's what Dr.
16 Stern's experience was insofar as it bore on a possible
17 contractual relationship between Satra and IBM.

18 Now, he knew it. He knew it.

19 You have heard Mr. Oztemel testify as to what
20 he thought Stern could do for them. Now, there is no
21 question but that Stern could bring something to Satra
22 that it didn't have, and that's some technical knowledge.
23 There is no dispute about that. We certainly concede that.

24 But what he said he could do and what he did not
25 in fact do was to bring, produce, control, influence

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2 and induce IBM to make this contract. Really, on
3 Counsel's own opening, that's what he says he is entitled
4 to be paid for. Now, I think what happened during the
5 course of this trial is that that position became a
6 position which almost to state it was to reflect the fact
7 that it was an unreasonable position to take, and it was out
8 of that that testimony was offered to build up, if you
9 like, Dr. Stern's ability to contribute to the IBM-Satra
10 relationship because of his technical background.

11 It's interesting to note that there are two
12 places in the record, notwithstanding the statement in the
13 opening, when Dr. Stern was asked -- rather in the opening
14 where it was stated all he had to do was produce, and he
15 was then asked on at least two separate occasions what he
16 was supposed to do in connection with the IBM-Satra
17 relationshio.

18 On Page 151 -- I will read just one short
19 answer:

20 "In addition to bringing out the agreement
21 between the parties, I was to continue to work with IBM,
22 explaining and offering the kind of services that Satra
23 was capable of, and I was to work with Satra in helping
24 identify the opportunities where IBM might be useful with
25 the Soviets. It was toward that end that Mr. Oztemel

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2 suggested that he would also like to introduce me to the
3 Moscow scene."

4 Now, on Page 299 of the record, in answer to
5 a similar question on cross-examination, Dr. Stern said:

6 "I was to exert my best efforts to see that
7 there would be an agreement between IBM, Stromberg and
8 Satra. I was to continue in discussions and negotiations
9 between the parties.

10 "After agreements between the client and Satra,
11 since I was a partner in the venture here, it didn't describe
12 specific actions I was to perform, like if I were getting
13 a salary to do this, this, this, but here I was to share
14 in the revenues. Therefore, I was to exercise my initiative
15 to assist wherever called upon, wherever I was able, to
16 maximize sales and profits. In particular I was to continue
17 to work with Satra, in helping to understand the needs of
18 a technology-oriented firm, or the needs of the customer,
19 the Soveits, in the use of the products, if I were able.

20 "And I would similarly be a communicator, the
21 other way, to explain why IBM had services Satra would
22 be able to perform. Over and above this, Mr. Oztemel
23 had made several suggestions to the effect he wanted
24 to intorduce me to the Moscow scene to see if I could pick
25 up some of that knowledge."

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2 Now, ladies and gentlemen, I must at this point,
3 I think, say to you that those positions on the part of
4 Dr. Stern are simply mutually exclusive. It has either
5 got to be one or the other. Was he being paid because
6 he introduced IBM, or, as he would have it in these
7 later answers, because he had an expertise, if you like,
8 experience, that was going to bring something to this
9 contract? He makes another -- and I will come back to
10 this in a moment, if I may.

11 Dr. Stern, I think -- and the plaintiff's case
12 also makes a kind of argument which also has to fall
13 because it depends on the same kind of inconsistent
14 positions.

15 Firstly, and I think you will hear more about this
16 in a little while, they take the position that nobody in
17 Satra should have, could have, or indeed did believe that
18 Dr. Stern could produce IBM. Now, they say this is so for
19 a number of reasons:

20 One, because Satra is an experienced company.
21 It has been around for awhile. It's employees and officers
22 are people of some experience. And they also say this
23 because, and you may recall that Mr. Stafford testified
24 that it was a matter of some public knowledge that IBM was
25 considering going into the Russian market. But that's not

1 10 rgmch 843

2 really what we are talking about. We are talking about
3 the ability of Stern -- Dr. Stern to induce IBM to deal
4 with Satra. That certainly even they don't argue was a
5 matter of record.

6 But there is a problem with that for Dr. Stern.
7 It's a problem for him in asking you to believe that we
8 shouldn't have believed him. And what's the problem?
9 The problem is his own testimony, because he has
10 repeatedly testified in this case that all through the period
11 of August of 1971 -- well, let's take it back, I think,
12 even further than that.

13 You may recall on direct testimony when he said
14 he came back and testified that he met with him and
15 IBM was going to go into Russia. You may recall his testimony
16 is that he was laughed at by the people on the executive
17 committee because they just didn't believe him.

18 Now, if that's so, it seems to me they could not
19 have believed or could not have knowledge that IBM was
20 going to go to Russia. Now, this goes all the way through
21 to August 31st and indeed goes all the way up to the
22 time they signed the contract on September 22, 1971 with
23 IBM.

24 You may recall that Dr. Stern testified that
25 Satra was very discouraged; Mr. Oztemel was disappointed

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2 after meetings with IBM. He didn't think they were going
3 to go; he didn't think they were going to make a deal with
4 Satra if they did go.

5 Now, this is Dr. Stern's own testimony. So
6 what I am trying to say to you is that Dr. Stern simply can't
7 have it both ways. He can't say we weren't entitled to
8 believe that he could bring IBM, and at the same time say
9 that we didn't think they were going to go, which we told
10 them.

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2 Now, it seems to us, it seems to the defendant
3 that these are just mutual exclusive kind of positions.
4 Now, you will recall that in here he was talking about
5 selling Satra his services. This was one of the things he
6 was supposed to do. Well, without alluding again to any
7 testimony other than Dr. Stern's, what was Dr. Stern's
8 testimony when I tried repeatedly to get him to tell me
9 what he knew about the Satra organization; how many lawyers;
10 how many accountants; how many engineers? You will recall
11 he didn't know.

12 Well, one thing a salesman has got to know, he
13 has got to know the product and if you don't know the
14 product, you just can't sell it. On Dr. Stern's own testi-
15 mony, he didn't know the product.

16 Satra's belief. What did Satra really know
17 back in August of 1971? Well, certainly they have testified
18 that they knew what IBM's record was in connection with
19 Russia; that they had made passes or attempts to get at IBM
20 unsuccessfully. They knew and expressed to Dr. Stern their
21 doubts. What do they know about what Dr. Stern had done and
22 who he knew? There was no question about the fact that he
23 had been to IBM and he reported that to them. There is
24 certainly no issue that he produced, if you like, IBM. He
25 is the one who produced, you may recall, on August 10,

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2 Mr. Stafford.

3 Now, there weren't a lot of meetings in August,
4 you may recall. Certainly Mr. Oztemel will tell you that.
5 There was a meeting on August 10 and there was another
6 meeting on August 24. These were the meetings where you
7 may recall Dr. Stern followed Mr. Oztemel back down the
8 street trying to get some kind of an agreement. But all
9 during this period Dr. Stern was the fellow who was in
10 control of the relationship with IBM.

11 You heard testimony as recently as this morning
12 that none of his people had anything to do -- when I say
13 none of his people, none of the Satra people had anything to
14 do with IBM. Dr. Stern himself says that he negotiated the
15 entire agreement and the testimony is just undisputed in the
16 record that you have heard being created, if you like, in
17 this courtroom, that Dr. Stern repeatedly told the Satra
18 people, the Satra lawyers, "Stay out of it or I will blow
19 it out of the tub." That's exactly what he was saying.
20 "Stay out of it or there will be no deal with IBM."

21 Now, in those circumstances I submit to you that
22 Satra had every right in the world to believe that Dr. Stern
23 was the controlling influence here. He was the fellow who
24 was going to deliver. Now, Dr. Stern has been asked I guess,
25 three or four times on direct examination a whole series of

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2 questions, and you may recall them, that begin with, did
3 you influence, did you induce IBM to deal with Satra, and
4 his answers have been uniformly no, I did not. I read to
5 you, and I would like to read to you again, one of the
6 whereas clauses in the contract prepared by Dr. Stern's
7 lawyer in November of 1971. This is after August 31, after
8 the alternate proposal was signed off on. This is after
9 September 3 when Dr. Stern says Mr. Mott started to
10 renegotiate with him.

11 What did Dr. Stern's own lawyer write on the
12 subject? Mrs. Hauser wrote, "Stern was instrumental in
13 introducing Consultant and IBM to one another and inducing
14 both parties to enter into the IBM agreements and advise
15 both Consultant and IBM as to the needs of the USSR to data
16 processing and other similar equipment and as to the
17 technical capability and resources for the USSR."

18 Now, it seems to me that it cannot be urged on
19 you that that isn't a statement, at least in part, of what
20 Dr. Stern was representing to be his role in this trans-
21 action, and I submit to you from Mr. Stafford's testimony
22 and Mr. Giffen's testimony that was not his role. You know,
23 Mr. Giffen's response to Mr. Stafford at the Leningrad
24 meeting was a very simple one-line response. It was, to the
25 best of my memory, "Oh, God, we have been misled."

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2 Now, there has been a current in this case of
3 I think -- it comes, I suppose, more out of the manner of
4 the testimony as it was given -- as indeed you heard, of
5 personal animosity. I suppose it's not unusual in any case
6 such as this, but the plaintiff says ~~yes~~, the defendant
7 says no and so we have a lawsuit. But I think you are
8 entitled to consider this when you consider the issue of
9 credibility.

10 What I mean by credibility is who do you
11 believe. This is a case about real people. You have seen
12 them and you have heard them. I think one of the things
13 that you as jurors, as non-lawyers who have often seen
14 things a lot clearer than the lawyers who are generally
15 much too close to a case to be very objective about it,
16 unfortunately, but I think you are entitled to consider the
17 characterizations that Dr. Stern has made of the people with
18 Satra. You draw from these characterizations whatever con-
19 clusions you want to draw.

20 I think my grandmother used to say to me, if
21 you don't have something nice to say about somebody, don't
22 say anything.

23 What did Dr. Stern say about Mr. Oztemel? Well,
24 Mr. Oztemel was a cheater and a reneger. He was this in
25 Dr. Stern's mind long before they signed the August 31

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2 agreement. Do people go into a partnership with cheaters
3 and renegs? What did he say about Giffen? Well, Giffen
4 was -- at first he just got sort of a mild put-down. He
5 was at first referred to as an average lawyer, but, however,
6 when we got to Dr. Stern's closer contacts with Mr. Giffen,
7 Mr. Giffen turned out to be a cheat and a liar.

8 Well, I suppose if you have a fight with a guy
9 maybe you would call him names.

10 What about Mr. Mott? Well, Mr. Mott was also
11 sort of put down. I am a little sensitive about lawyers.
12 He was called a so-called lawyer. I don't know what a
13 so-called lawyer is, but he was also told that he couldn't
14 go to IBM because he was dishonorable.

15 I have to assume that Dr. Stern didn't think it
16 was funny when he said it. I have to assume that he meant
17 it. These were his partners.

18 What about poor old Mr. Chambers, poor old
19 Col. Chambers down in the Washington office? He didn't
20 escape unscathed either. I think he was described as a
21 hack and a buffoon. I would like to think that he might
22 have been a little more charitable to the fellow who
23 apparently spent some time in the service.

24 Now, I fail to understand these kinds of
25 characterizations if they are intended -- if they were

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2 intended, and I assume they were not said unintentionally.
3 They were not said in the fit of rage. They were said and
4 they were meant.

5 You recall when we asked Dr. Stern what happened
6 when he called all these fellows all these names. Well, what
7 happened was, apparently, that Mr. Oztemel "flushed" and
8 then sent Dr. Stern off to deal with the executive committee.
9 You have seen Mr. Oztemel testify and I suppose you have to
10 ask yourself, is it reasonable to say or reasonable to con-
11 clude that that's all he did.

12 What did Mr. Mott do? Well, Mr. Mott, when he
13 had his argument with Dr. Stern, he simply got up and
14 charged out of the room.

15 Now, I ask you, is that a reasonable thing to
16 conclude anybody did who was called that? These are, I
17 suppose, what I would call fighting words.

18 I suggest to you this is a difficult thing to
19 believe, let's suppose he did say it. Let's suppose he
20 said all of these things and he called them all these names,
21 and let's look at it from Satra's side.

22 I suggest to you that if these names were
23 called and these things were said and the reaction of the
24 Satra people was as Dr. Stern described it, it was for only
25 one reason, and that is that they believed that Dr. Stern

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2 could produce what he said he could produce, and that's
3 produce IBM and its millions of dollars, if you like,
4 because there was sure no other reason to take that kind of
5 abuse. There is just no reason in the world.

6 So in conclusion, ladies and gentlemen, I would
7 just like to review the position of the defendant here.
8 It is our basic position that, one, there was never a meeting
9 of the minds between Dr. Stern and the Satra people. What
10 happened on August 31 was simply a part of a kind of a con-
11 tuning and running colloquy, if you like, discussion, and
12 that there was never, as there had to be for there to be an
13 agreement, an agreement with respect to these expenses.

14 Secondly, we think that no conclusion other
15 than one to the effect that Dr. Stern told him he could, as
16 lawyers say, introduce and influence the IBM people to deal
17 with Satra is possible under the facts of this case because
18 they didn't believe they would have agreed to a 50 percent
19 shareof the profits.

20 If the kind of services that Dr. Stern was in
21 fact to render, as he described them in the record at 151
22 and 299 of the record, if these technical kind of services
23 were what were involved in this agreement, then I suggest to
24 you that he would have been compensated just the same way
25 he was compensated in connection with the Kama River project.

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2 He would have been paid like any other consultant. He would
3 have been paid a per diem. He would have been paid like a
4 plumber or a lawyer, as far as I am concerned, by the hour,
5 by the day, for the kind of services that he described. He
6 never would have been offered that kind of a deal. That's
7 probably reflected in what Mr. Oztemel said to him in
8 November when he told him that the game was over.

9 Nobody at Satra has ever urged in this litigation
10 at any time that this man wasn't entitled to be paid. He
11 was paid for what he did in Kama. He took it -- he
12 complained, but he took it, and he was paid a bit of money.
13 The \$10,000 for a couple of months work. That isn't too
14 bad. He was offered \$100,000.

15 This isn't a case where the people said, "Get
16 lost. We don't want to know you." This was a case where he
17 told them something that wasn't so.

18 Notwithstanding that, they recognized he made a
19 contribution to the IBM situation and they offered him
20 \$100,000. It seems to me that's pretty reasonable when you
21 are aware that what they have collected to date on that
22 '71 contract is \$95,000 and that even on the new contract in
23 '73 they have collected \$180,000.

24 Now, even on Dr. Stern's figures he would have
25 had \$112,500. He got \$12,500. He was doing pretty well

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2 against those kind of receipts which nobody knew they were
3 going to get back in August of 1971.

4 Finally, ladies and gentlemen, I would just
5 conclude by saying this: that we think that even if there
6 was an agreement, which we say never existed, even if you
7 conclude that Satra didn't believe that Mrs. Hauser wrote
8 in her contract with respect to introduction and inducement
9 of IBM, that notwithstanding all of this, Dr. Stern simply
10 didn't perform the very services which he described here
11 and he was unable to perform.

12 You may recall Mr. Stafford's testimony in this
13 regard, short though it was, and you may recall Mr. Giffen's
14 testimony and indeed, Mr. Oztemel's testimony.

15 Again I don't say this to downgrade Dr. Stern's
16 experience. His experience simply did not relate to the
17 IBM-Satra relationship. Dr. Stern simply wasn't what was
18 needed and he couldn't deliver in terms of the services he
19 said he could deliver.

20 With that, ladies and gentlemen, I have concluded
21 and I thank you for your kind attention on a sultry afternoon.

22 Thank you.

23 THE COURT: Unless you prefer to the contrary,
24 Mr. Hellerstein, I am going to suggest a short recess before
25 your summation. We will take the afternoon recess at this
time.

(Recess.)

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2 THE COURT: Mr. Hellerstein.

3 MR. HELLERSTEIN: Members of the jury, we
4 lawyers have a way of throwing so many words at a person as
5 to perhaps, each time we come into court, set a record of
6 how many words can a human head absorb. At the risk of
7 going beyond that, I would like to say my piece, because I
8 fear, in listening to the words that Mr. Hill has inflicted
9 upon you, if I can use that word, truth becomes something
10 less than that and the facts of the case become something
11 different.

12 Just to take a small, irrelevant fact, Mr. Hill
13 talks about \$180,000 coming to Satra under this new agree-
14 ment of 1973 replacing the old agreement between IBM and
15 Satra. My arithmetic is back in school, but when I compute
16 \$16,667 per month for 41 months and \$9,350 per month for
17 40 months, the number that comes out at the end of that
18 calculation is something over a million dollars, which, as
19 I always understood, was a few dollars more than a hundred
20 thousand dollars.

21 The stipulation that was submitted by IBM and
22 agreed to by Mr. Hill and me recited the dollar value of
23 the contracts that IBM had with Russia as of this moment,
24 and they come out to about \$13,000,000. Applying the usual
25 arithmetical formulas, that comes out to something like
\$400,000 on existing contracts, not to speak of additional

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2 contracts beyond that.

3 So we get to wonder, even whether this little
4 irrelevant fact, whether we are talking about this case or
5 some other case. But I would like to talk with you about
6 this case because that's what we are here to consider.

7 Juries are exceptionally good when trials become,
8 in effect, exercises in determining morality. By morality
9 I mean who is lying and who is telling the truth, who is a
10 cheat, who is dealing straightforwardly. And I think this
11 is what this case is about.

12 From the beginning, when Dr. Stern came to
13 consult on the Kama River project with a fee of \$500 a day,
14 he found out that he wasn't paid at all until he had to work
15 three months, and his two weeks' work that he had agreed to
16 had been extended and he found himself working and working
17 and working and working on promises that vanished. And
18 eventually, for three months' work that should have earned
19 him something like \$20,000 at the pay rate he came in at,
20 he was getting 10 with a promise of another 15 if the deal
21 comes through.

22 And Mr. Oztemel explained the deal. He said his
23 promise was, how did he put it, symbolic. Symbolic of what?
24 Symbolic of a promise or symbolic of the way Mr. Oztemel
25 apparently deals with people, putting them off and putting

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2 them off, letting them engage themselves, letting them work
3 and then, when their back is against the wall and they have
4 no bargaining power at all, giving them what he feels like
5 giving them.

6 In the Kama River project he felt like offering
7 25 and paying 10, and so he paid 10. Here he says: well,
8 look. I have a contract. But we are friends. You know,
9 we don't talk about contracts. I'll pay you \$100,000. Go
10 home, Dr. Stern. Don't bother me.

11 Dr. Stern didn't go home. He is here in court
12 and he is appealing to the justice of this jury because
13 this is where negotiation stops; this is where we are
14 dealing with truth and falsity. We are dealing with a world
15 and not some figment of Mr. Oztemel's imagination.

16 And the question here is, is there a contract
17 or is there not a contract? Did the parties agree to some-
18 thing they thought at the time was binding? And is it
19 binding? Was Mr. Oztemel a cheat or was Dr. Stern a cheat?
20 These are questions that you have to decide.

21 Mr. Oztemel said a number of things why he
22 wanted Dr. Stern before the IBM deal came into being, and
23 then he said a number of things why he didn't want Dr. Stern
24 after the IBM deal came into being. It is rather interesting
25 to compare the two.

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2 He said, at page 625 of the transcript, before
3 the deal, "We came to the conclusion that with my knowledge
4 of Eastern markets and trade and with his" - that is,
5 Dr. Stern's - "ability and knowledge of sophisticated
6 technology and his reputation and knowledge of highly
7 technology oriented United States companies, that we should
8 be able to form a good partnership. This is the conclusion
9 we came to. We both thought it was a good idea."

10 Here is Mr. Oztemel now saying, at the beginning,
11 that we thought we could contribute to one another, that
12 Dr. Stern had a certain ability to communicate with industry
13 of this type, that Mr. Oztemel had certain knowledge and
14 ability with respect to East and West trade, and they could
15 make a marriage, a partnership.

16 They went on to talk about the value of this.
17 We had some admissions as to what IBM, not Mr. Stafford,
18 but IBM, had told Oztemel. He found out from Mr. Jones,
19 through Mr. Stafford's statement, that Satra had checked out
20 well and Dr. Stern had checked out well.

21 Mr. Oztemel admitted that Dr. Stern's affiliation
22 with Satra weighed in favor of the association between IBM
23 and Satra, that is, helped it conclude the contract.
24 Mr. Oztemel said that Stern "filled in a vacuum in our
25 company which had to do with highly sophisticated technology."

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That is to say, Dr. Stern made a substantial contribution to Satra's ability to communicate with companies like IBM.

Mr. Oztemel said, "Once we had somebody like that in our company, it naturally opened the door to people with this kind of orientation." That is to say, with Dr. Stern's affiliation it was easier for Satra to get in touch with IBM, easier to tell IBM what Satra could do for it, easier to deal with this type of company that Mr. Oztemel apparently had had years of failure in dealing with.

Mr. Oztemel said, "I welcomed the possibility of associating Satra with Dr. Stern."

All this, ladies and gentlemen, is at a time when Oztemel knows that he's had failure in dealing with IBM, he has not been able to land IBM. Mr. Giffen testified as to an effort some time before that had failed. It is at a time when Mr. Oztemel knows that there is a competitor, Savaretti, an Italian trading firm, doing things just the same way Satra does it that is also being looked at by IBM.

And so Mr. Oztemel has to think that "maybe Dr. Stern can help me. He seems to be able to communicate with IBM. He seems to know the right people. He seems to know what he is doing. Maybe he could help. Right now I have nothing. With Dr. Stern, maybe I'll have something.

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2 So I'll make a contract." And they did.

3 And they made a contract, and Dr. Stern delivered,
4 and IBM signed up with Satra, and then we have a different
5 story. Then we have Mr. Oztemel saying, "What do I need
6 Dr. Stern for? What did he promise, after all? This thing
7 that he tells me, that he'll be able to communicate, well,
8 I know how to speak."

9 You saw Mr. Oztemel. He speaks rather glibly.
10 Not that he distinguishes well between words like belief
11 and impression, but he has a gift for gab. And what does
12 he need Dr. Stern for? Dr. Stern had certain limitations
13 of speech. Maybe he could do better.

14 And, after all, if Mr. Oztemel keeps the
15 contract for himself, Dr. Stern doesn't have to get paid
16 anything, or he can get paid \$100,000 and that will be
17 enough, "And I'll keep the profits."

18 So we have this interesting comparison between
19 what Dr. Stern means to Oztemel and Satra before the IBM
20 contract is made and what Dr. Stern means afterwards.

21 Let's go in and talk about the contractual
22 underpinning to this August 31 offer and acceptance that I
23 placed before you in the form of Exhibit D. You'll remember
24 that Dr. Stern had an unhappy experience with his consult-
25 ation with the Kama River project, and he determines that if

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he is to do a deal with Satra, if they are to work together for their mutual profit, he will have a contract in writing.

There is a meeting on August 10 between Mr. Oztemel and Stern. The meeting is written up in Exhibit A. Dr. Stern writes it up. Mr. Oztemel agrees that he writes it up. It has some blanks about fees and expenses, but it has its paragraph 2 that Mr. Oztemel agrees is the partnership that he has been talking about. I quote:

"Whatever benefits are derived from these efforts will be shared equally by the partners." Mr. Oztemel agreed.

Now, you remember what Dr. Stern said about this agreement. He said he had an understanding that there would be a 50-50 sharing and that he would be financed by Mr. Oztemel, the precise amounts of the financing not having been agreed to but the concept having been agreed to; he would be taken care of in terms of his expenses and they would share together. This is back on August 10, the very beginnings of the conversations with IBM.

And you remember that Mr. Oztemel characterized this: "Well, Dr. Stern put some things down on paper. We had a lot of discussions. It was a lot of fun," he said. Imagine, a lot of fun.

Here is this man, having already been cheated on the Kama River project, intent on putting something in

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2 writing and coming up to this man who loves to negotiate.
3 Whatever Dr. Stern says, it is twisted into something else.
4 Dr. Stern's intent and his precise mathematical way of coming
5 to a precise, written understanding, Mr. Oztemel turns every-
6 thing into air. He is a magician.

7 Dr. Stern persists, and the deal changes a
8 little bit, and we have this in Exhibit B.

9 Now, you remember Mr. Hill was talking about
10 Dr. Stern's participation not being worth all that money,
11 that he should be paid a per diem like a plumber or a
12 lawyer. That's Exhibit B.

13 Here Mr. Oztemel is committing himself to paying
14 \$7,500 a month as Dr. Stern's fee, and this is one alter-
15 native. Dr. Stern will be paid this sum, \$7,500 per month,
16 or \$90,000 a year, and the proportionment of sharing in the
17 IBM deal, if it comes about, is 75-25, Dr. Stern to have
18 25, Satra to have 75.

19 And the other proposal is the sharing, which
20 Mr. Oztemel admits was always in the case, this partnership.

21 But what happens? Dr. Stern says, "Okay, I'll
22 take it." Do you remember that telephone call over the
23 weekend? Dr. Stern testified precisely to what was said.
24 Mr. Oztemel again made it vanish into air. He remembered
25 a conversation on the weekend, but which weekend? His mind

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2 is a blank. With respect to which agreement? Again his
3 mind is a blank.

4 You know, common sense does not depart from the
5 courtroom. It is supposed to pervade the courtroom and
6 inform everything that we do. I ask you ladies and
7 gentlemen to exercise common sense and ask yourselves the
8 question as I asked myself the question: what other agree-
9 ment was there? What were they talking about? What was
10 this, a burlesque?

11 Dr. Stern, having accepted, comes east, and now
12 Mr. Oztemel doesn't meet with him, he sends his emissaries,
13 his emissaries in the form of Mott and Hermann. You've
14 seen Mott and heard him testify. Hermann was perhaps
15 identified. I don't recall the number of people who were
16 identified in the courtroom, but he didn't have anything to
17 say. He didn't get up to say anything. If he had something
18 to contribute to this, I'm sure Mr. Hill would have produced
19 him.

20 And what did they do? They say that "the
21 executive committee has some ideas that are somewhat differ-
22 ent. We know that you have an agreement, Dr. Stern. But,
23 here, Satra agreements don't mean very much. We would like
24 to renegotiate."

25 And Dr. Stern hears them out with respect to the

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2 schedule of expenses, which I'll talk about in a few minutes,
3 and hears again another proposal.

4 You know, they say to Dr. Stern, "\$7,500 a month
5 s really a lot of money. Let's reduce it. Let's reduce
6 the amount of time that you are paid it." And Dr. Stern
7 charges them with renegeing and cheating.

8 Mr. Hill suggests to you that this is somehow
9 indicative of Dr. Stern's credibility. Again, I don't know
10 what case he is talking about, because all we have here is
11 an effort by emissaries from an executive committee that
12 Mr. Mott himself says means nothing, it only carries out
13 Mr. Oztemel's wishes, to try to negotiate Mr. Oztemel's
14 deal.

15 You know, it is as if Mr. Oztemel was saying,
16 "I went so far with Dr. Stern. Maybe I am a little
17 embarrassed to come and talk with him again. After all, I
18 just agreed. Why don't you fellows come out here and see
19 what you can do, and then I'll take him again and we'll
20 have this tennis ame between us, and Dr. Stern will be the
21 tennis ball."

22 Again, it is a burlesque. Dr. Stern sees it
23 through, insists on seeing Mr. Oztemel, and we come into
24 this agreement that is before you of August 31. Listen to
25 what Dr. Stern says about this attitude that he has after

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2 Mr. Oztemel's emissaries have tried Dr. Stern out.

3 Dr. Stern says:

4 "Look, Ara, we had an agreement reached a
5 couple of weeks ago, on August 10th. You reneged on that,
6 your so-called executive committee. We had an agreement on
7 the night of the 25th. You reneged on that, your so-called
8 executive committee. You own like 80 percent of Satra.
9 This executive committee is an excuse. You know it and I
10 know it."

11 Dr. Stern continues:

12 "I don't want to negotiate with you any more.
13 You are -- well, you are a cheat. You are reneging. I
14 refuse to negotiate with you any more. If you want to do
15 business with me, you make me any offer you want, but you
16 put them down in writing and you sign your name. Otherwise
17 I'll not negotiate with you any more."

18 This is page 93 of the transcript.

19 Out of that comment, corroborated by Mr. Mott,
20 who heard Dr. Stern call Mr. Oztemel a reneger, corroborated
21 by a number of witnesses who understood Dr. Stern to be
22 adamant in requiring Satra to put its proposals into writing,
23 the proposal of August 31 came into being, and it is before
24 you. It says:

25 "In connection with a proposed joint venture

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2 with IBM and Stromberg Carlson, we offer you the following
3 two alternatives for our relationship. Either one is accept-
4 able to us."

5 And the first proposal goes on to say that
6 Satra will not provide any financing, that there will be a
7 50-50 sharing, there is a certain treatment about expenses,
8 and that Satra is to have control of the personnel.

9 Then there is a second proposal, where, instead
10 of the \$90,000 that was offered previously - that is,
11 \$7,500 a month - the amount is cut down to \$6,250 per month,
12 and instead of the period being one year the period is now
13 six months. That is the second proposal and it provides for
14 a 30 percent sharing by Dr. Stern."

15 And Dr. Stern reads the agreement, or the
16 proposal. At his request -- Mr. Oztemel said that it was at
17 Dr. Stern's request; it is not very important. At any rate,
18 this language about retainers, that says retainer, and they
19 could have been very substantial, no one knows what the
20 retainers would be at that time, and there is testimony by
21 Giffen and Oztemel that it could have been a half million
22 dollars, there was to be a sharing of these retainers,
23 50-50. That was the proposal.

24 Before we go on, it is well to think a little bit
25 about what is going on here, because this document is rather

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revealing. We know that Dr. Stern accepted Exhibit B, which was the proposal that he get \$90,000 a year. You remember that Dr. Stern said that what Mr. Oztemel wanted was that Dr. Stern take the 50-50 sharing, because on that proposal Satra wouldn't have to lay out a cent.

What is happening here is that Oztemel, Satra, concerned that Dr. Stern may take a proposal that requires Satra to pay a monthly sum to Stern, reduces that amount. Instead of \$7,500 a month for 12 months, or \$90,000 a year, it is half, \$6,250 a month for six months, which comes out to, I think, \$37,500, less than half.

What Oztemel is saying is that he places so little credence, so little hope in the possibility of getting an IBM deal that he would rather offer very little money to make sure that Dr. Stern takes the proposal that would give him a half.

And now they have the gall to complain that he took the half. This case is a topsy-turvy situation.

Dr. Stern accepts this agreement, and you have his letter of acceptance on the front page.

Now, we are given a long dissertation on the possibility that this agreement was not an agreement. Mr. Oztemel admitted it was an agreement. Dr. Stern certainly considered it an agreement. Mr. Mott said it was an agreement.

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2 Everybody who dealt with it at the time thought it was an
3 agreement. Mr. Hill apparently thinks it was not an agree-
4 ment.

5 You know, I guess, when you want to break a
6 contract, anything that is thought of as possibly cogent
7 is trotted out and tried out. But if the parties who deal
8 with the situation deal with it considering that they are
9 going to be bound by it, it is an agreement.

10 One makes an offer, another accepts. It is a
11 deal, and no one comes in later on to say that you made a
12 bad deal, you can get out of it. That is not an excuse to
13 get out of a deal.

14 If people think that they are committing them-
15 selves, if people think that they are becoming bound by a
16 particular agreement, it is an agreement. It doesn't need
17 any magic words. It doesn't have to be put in red ribbons.
18 It doesn't have to have a lot of whereas recitals. You
19 don't need a lawyer to have an agreement. You can make an
20 agreement with yourself. In fact, there was a lawyer,
21 Mr. Mott, a partial lawyer, but he was a lawyer.

22 (Continued on page 868.)

23

24

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2 Then we are told something about these expenses,
3 that what the parties thought they agreed to is
4 really not an agreement. Well, you remember, I trust,
5 the long discussion that occurred when Mr. Oztemel's
6 emissaries came out before this agreement, before August 31st,
7 to negotiate with Dr. Stern. They put two proposals
8 before Dr. Stern: One that there would be an expense
9 schedule, and the second that Dr. Stern wouldn't go to work
10 at Satra at \$90,000 a year but at something less.

11 Well, Dr. Stern testified at length about that
12 schedule. He told you what incremental meant; he told you
13 what annual meant. And a schedule was put out and he
14 put the column headings on, and he drew out Mr. Mott to
15 make sure that what Mr. Mott was saying was understood
16 by Mr. Mott and by Dr. Stern.

17 Now, again I say common sense does not leave a
18 courtroom. You have listened to Dr. Stern. I think you
19 can appreciate the precise mind he has. I think you
20 can appreciate his unease at ambiguities. Everything
21 had to be precise to the last detail. You remember
22 sometimes how restless I became in some of my questions when
23 Dr. Stern insisted on telling everything that happened
24 in the detail that he recalled.

25 Such powers of recollection are not ordinarily

1 2 jgmch

2 seen. And when they are seen, I think the jury can
3 appreciate that here is a man with a fine knowledge of
4 detail and a fine appreciation for detail. And Dr.
5 Stern, with that appreciation, drew out Mr. Mott, and they
6 went over every single aspect of this.

7 But that didn't bother Mr. Mott, because no sooner
8 than the ink was dry, if it was dry, on Dr. Stern's
9 acceptance, Mr. Mott decided that he would come out with a
10 draft. It is called a formal agreement. It has some
11 "whereas" clauses, so I guess that makes it a formal
12 agreement. But in the guise of being an impartial lawyer --
13 did you hear him say "impartial lawyer"? When Judge
14 Lasker asked him who was paying him, he said Satra was
15 paying him. I guess that, in Mr. Mott's view, doesn't
16 change the impartiality of his nature. But he served his
17 client. He tried to write an agreement, a very cute
18 agreement, just changing a word here or changing a word there,
19 or adding a clause that perverted what was agreed to by
20 Dr. Stern and Mr. Mott, and that became the schedule that
21 went into the agreement that went before them.

22 This schedule talks about incremental annual
23 revenues and expenses. Paragraph B of Mr. Mott's version
24 talks about cumulative annual basis.

25 Ladies and gentlemen, I defy you to try to under-

1 3 jgmch

2 stand what cumulative annual basis is. What Mr. Mott is
3 doing is putting an ambiguity into this agreement so that
4 Mr. Oztemel at some later date can negotiate the heart
5 out of Dr. Stern again.

6 Then he goes on and says, "Dr. Stern can't get
7 paid unless there has first been deducted from the receipts
8 all accrued prior unpaid expenses from the date of this
9 agreement to the end of the agreement year in which the
10 receipts are received by Satra, based on annual minimum
11 expenses of a hundred thousand dollars as per attached
12 Schedule A."

13 You read this and you find nothing of those
14 words. These are additions which now Mr. Mott comes on
15 the witness stand and has the gall to say that all he
16 is trying to do is to repeat what was agreed to by the
17 parties. If it had been agreed to by the parties, Mr. Mott
18 would have written it into the version that you have before
19 you and that Dr. Stern accepted.

20 And Dr. Stern didn't accept this. It is clear he
21 didn't accept it. The very exhibit that we have in
22 evidence has Dr. Stern's handwriting in the margin, and
23 I think you can see from your place this big "No" with
24 an exclamation point that Dr. Stern wrote in the margin.
25 It wasn't the deal. "Not according to agreement," he wrote.

1 4 jgmch

2 Mr. Mott admitted that Dr. Stern didn't agree to
3 it. Dr. Stern put it rather more pungently. He told Mr.
4 Mott to go to hell.

5 Well, maybe Mr. Hill will again trot this out
6 as something that has to affect credibility. I think it
7 affects exasperation, of how much patience did the man
8 have to have when emissaries come out to renegotiate a
9 deal that had been made three days before? This has got to
10 be some kind of gall.

11 But Mr. Oztemel is undaunted. He has failed here,
12 Mr. Mott recognized it as a failure and doesn't try to do
13 anything more about it. Incidentally, when Dr. Stern's
14 lawyer, Mrs. Hauser, submits a draft, Mr. Hill didn't bother
15 to read this to you, but the schedule of expenses in that
16 draft was clearly that (indicating), and instead of working
17 on a graph it worked on percentages, and it said very
18 plainly that on the first \$250,000 of income or any part of
19 it, forty percent would be treated as expenses if it were
20 commission. That means that as you go along the graph
21 you have a percentage. If you make a hundred thousand
22 dollars of income, forty percent is taken off, or \$40,000
23 is taken off, as expenses. This business of a lump sum
24 of a hundred thousand dollars is Mr. Mott's creation.

25 It is interesting. You remember that Mr. Oztemel

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2 was explaining this, and he explained it in a rather
3 interesting way. He said that you have zero revenue, a
4 hundred thousand dollars of expenses, \$250,000 of revenue,
5 et cetera. He never bothered to go on and spell out his
6 hypothetical.

7 But there is no zero here. This hundred thousand
8 dollars under the incremental annual expenses column
9 relates to \$250,000. And what incremental says, as Mr.
10 Mott agreed, is progression, if there is a progression on
11 the revenue side, there is a progression on the expense
12 side. As we approach \$250,000, the proportion of this number
13 to that number is taken off, and so on. There is nothing
14 about carryover here. It is supposed to be done on
15 an annual basis, and the agreement clearly says annual
16 basis. It says "after deduction of expenses on an annual
17 basis, as per attached schedule." That's Paragraph B.

18 So what are they talking about, there is no
19 agreement? They wrote the instrument. If there are any
20 ambiguities on here, Judge Lasker will charge you any
21 ambiguities are strictly construed against the party who
22 wrote the agreement. Dr. Stern didn't write this. Mr. Mott
23 wrote it. Mr. Mott, of course, now begs off and says it was
24 somebody else. He doesn't know who else. But it is clear
25 he was there. He annotated the agreement. He admits these

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2 additions to the agreement, with the word "renewal,"
3 with this line, with this insertion on the second page,
4 are all his. It is his document.

5 It is Mr. Oztemel's document and they come in
6 with some nerve to say that there was no agreement.

7 What do they expect you people to believe? It
8 is an insult to your intelligence that here Mr. Oztemel
9 says it is an agreement, Dr. Stern believes it is an
10 agreement, Mr. Mott believes it is an agreement, and yet
11 the argument is made that you should invalidate the contract,
12 what these people agreed to, because it is not an agreement.

13 Well, we move along. On September 22nd, about
14 three weeks after Dr. Stern and Mr. Oztemel have their
15 agreement, Dr. Stern is able to bring about a meeting of
16 the minds between IBM and Satra. He helped participate
17 in that deal and, in Mr. Oztemel's words, he brought
18 about the deal, he helped conclude the deal, he introduced
19 the deal, he did what he had to do.

20 The benefits of the bargain went to Satra. They
21 wanted IBM. They got IBM. They wanted to make money
22 by IBM. They've got a great opportunity to make money by
23 IBM and they have a contract that is going to contract
24 them more than a million dollars.

25 Yet they want to fire Dr. Stern. He did what he

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2 had to do. He went to meetings. He cultivated the
3 meetings between them, first, by a call to Ambassador
4 Thompson, then by a call to Mr. Jones, then by meetings
5 with Dr. Stafford and Witham and Hendricks and Farr,
6 the other IBM people. He explained Satra; Oztemel was with
7 him and they explained Satra. Giffen was with him and they
8 explained Satra. There was a letter of intent by IBM
9 to Satra addressed to Mr. Giffen who he is told doesn't
10 even belong there because Mr. Oztemel, according to his
11 testimony, according to what he said Dr. Stern said to
12 him, told Giffen to stay away. Het Giffen was there.
13 Mr. Stafford said there were quite a few meetings with
14 Giffen and an agreement comes about.

15 The agreement comes about giving a commission
16 rate of four percent to Satra, 3-1/2 percent on data
17 processing equipment and seven percent on office equipment,
18 averaging out to four percent. Dr. Stern testified that he
19 tried to get this four percent to double the amount of
20 commission that Satra wanted to get with Mack Trucks. He
21 was getting two percent with Mack Trucks. Now it was
22 entitled to four percent, so there would be a sharing at no
23 expense to Satra.

24 Mind you, ladies and gentlemen, Dr. Stern brought
25 about a deal that doubled the income potential that Satra

1 8 jgmch 875
2 could get. When Satra negotiated for itself, it was
3 able to negotiate for two percent with Mack Trucks. When
4 Dr. Stern negotiated, Satra is becoming entitled to four
5 percent, and Dr. Stern was going to share in that, he thought,
6 at two percent. And the agreement was made.

7 Coincidentally, we find that Satra no longer had
8 the Mack Truck deal. That agreement died. And so perhaps
9 they have the motivation now to take all the income from
10 IBM for itself and see if they can do away with Dr. Stern.

11 Then there is a meeting or two meetings in London
12 with Mr. Stafford, with Mr. Oztemel and with Mr. Giffen.
13 And it is curiously interesting, the words used to describe
14 what was said at that meeting. Mr. Stafford, who ostensibly
15 is supposed to be an innocent bystander, is saying the words
16 to Oztemel like, "Let me straighten you out." Well, if
17 this man is such an innocent bystander, indifferent to
18 what is going on, why does he have the need to straighten
19 anybody out?

20 Mr. Giffen says that Mr. Stafford said to him,
21 "You'd better look at that contract you have with Dr.
22 Stern." Well, if Mr. Stafford is indifferent to the
23 situation, if he is neutral and unbiased, he wouldn't
24 use those words.

25 We find that Mr. Stafford ends up with Satra,

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2 ends up with having the liaison with IBM, the very thing
3 that Dr. Stern was supposed to do.

4 Now, it doesn't need too many inferences,
5 too many stretches of the imagination, to find out what
6 happened at that meeting. Mr. Giffen and Mr. Oztemel,
7 looking for a way to break the deal with Dr. Stern, find
8 it. Mr. Stafford is their man, and he is so willing to
9 cooperate and he is paid back in kind as times goes
10 along.

11 Then we have this little plot that is nurtured at
12 that point and carried out by Mr. Oztemel.

13 You know, it is interesting. Mr. Oztemel is
14 complaining that he was cheated by Dr. Stern, that Dr.
15 Stern was supposed to do a whole lot and be very important,
16 and IBM didn't need him at all. Well, he forgot, I guess,
17 about this memorandum that Mr. Stafford wrote to Mr. Jones
18 of IBM having to do with a series of meetings in Moscow
19 September 27th through 29th. It is Exhibit RR. I'll
20 read the last paragraph:

21 "Satra enjoys an excellent reputation in Moscow.
22 It has top connections, an IBM type of staff. There were
23 upwards of ten Satra people in Moscow during my stay, all
24 of whom made an excellent impression. The Messrs. Giffen,
25 vice-president, and Stern, senior consultant, joined me

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2 during all my calls and were extremely helpful. I feel
3 it is essential that Mr. Giffen be enrolled in an IBM
4 executive school to familiarize himse'f with IBM equipment
5 on a general basis, and Dr. Stern be enrolled in more
6 detailed IBM courses, as he will be very helpful in the
7 systems management aspects of the Kama River and similar
8 projects."

9 Mind you, this is Mr. Stafford reporting to his
10 superiors that Dr. Stern will be very helpful, and Mr.
11 Oztemel has the nerve to insult us here by saying that
12 Mr. Stafford told him that Dr. Stern wasn't needed at all,
13 that it was a useless appendage, that he could easily be
14 let go.

15 It is interesting to examine the language used
16 by Mr. Oztemel when he explains what he did, when he
17 explains this whole situation. He says, "I told Dr. Stern
18 that I had entered into an agreement with him on some
19 definite premises.

20 "Q Did you tell him what those premises were?"

21 This is Mr. Hill questioning at Page 657 of
22 the transcript.

23 "A Yes, sir. I was just about to tell you."

24 Then he goes on at first to tell you about the
25 nice things about Dr. Stern. "Dr. Stern would bring IBM

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2 to us and arrange a relationship between Satra and IBM.
3 That he had done."

4 Then he goes on to say, "The other part of
5 my understanding and my agreement with him is that he
6 would carry literally fifty percent of the load in serving
7 the IBM account," and using his own words, Mr. Oztemel
8 said, "I reminded Dr. Stern that he had said without his
9 presence and work that the contract with IBM was never
10 possible."

11 We explored before the language that Mr. Oztemel
12 used in characterizing the value of Dr. Stern before the
13 IBM contract was made, and you will recall -- I won't go
14 through it again -- that he appreciated the value of Dr.
15 Stern, he was interested in the partnership with Dr. Stern,
16 he was interested to avail himself of the help and access
17 that Dr. Stern could give to Satra, he was interested in
18 the hope that Dr. Stern could open doors that Satra itself
19 could not open.

20 And now, when Dr. Stern has delivered, he's got
21 no more use for him.

22 Mr. Oztemel admits that Dr. Stern did everything
23 that Mr. Oztemel wanted him to do. In fact, Mr. Oztemel
24 said he did more than he was required to do. Dr. Stern
25 was interested, as he characterized it, to maximize profits.

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2 Whatever Dr. Stern could do to bring about more business,
3 that's what he was supposed to do. That was his deal.
4 He was a joint venturer. When you are a partner with
5 another person, you contribute. You don't ask yourself
6 precisely what I have to do. You do your best. You
7 use your initiative. You use your intelligence. You don't
8 have to have any special legal training to know that. It is
9 in everyday life. It is what happens in a marriage.

10 A marriage contract doesn't say in fine detail
11 what a husband and what a wife does. They are both
12 contributing to a happy marriage. If you have children in
13 a marriage, you don't have a contract that says who is to
14 do what. You do what you have to do. If the wife is ill,
15 the husband contributes. If the wife works, the husband
16 contributes, and vice versa.

17 That's the same kind of contract we are talking
18 about. One is a marriage partnership and one is a business
19 partnership. You can have partnerships going on in explicit
20 detail covering every kind of possibility, and you can have
21 a partnership agreement that says let's be partners and do
22 something with respect to a specific thing.

23 Dr. Stern thought he was a partner with Satra.
24 He was ready and willing and able to do whatever had
25 to be done to maximize profits, to sell IBM, to contribute

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2 to IBM sales to Russia; whatever he had to do, he
3 was willing to do. And Mr. Oztemel agreed to that, admitted
4 to it, and admitted that whatever he asked Dr. Stern to
5 do he did. In fact, Dr. Stern did more.

6 So where is the failure of performance? It is
7 an incredible statement that is trotted out from the
8 witness stand.

9 We went through a whole series of exhibits and
10 documents with Mr. Oztemel, trying to get him to be
11 explicit on what he said Dr. Stern was supposed to do that
12 he failed to do. I had him read this contract, you will
13 recall, and he read not anything in Proposal No. 1, which
14 Dr. Stern had accepted, he found a sentence in Proposal
15 No. 2. It happened to be the same sentence that was also
16 in Proposal No. 1, but it indicates that Mr. Oztemel
17 is searching for any kind of straw to buttress his
18 argument.

19 We went through some documents where Mr. Oztemel
20 patiently explained to Satra all that Satra could do for
21 IBM. I . . . Stern's services weren't mentioned in that. Dr.
22 Stern didn't have anything to do for IBM that was a matter
23 of explicit direction in the contract. And Mr. Oztemel
24 had to agree to that. He agreed that what Satra was
25 supposed to contribute were financial services, barter

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2 services, that sort of thing. Dr. Stern's type of technical
3 services weren't there.

4 He is fooling us people. What Dr. Stern said
5 he was going to do was to create a communications link,
6 he would be able to translate IBM's needs to Satra so
7 Satra can better exploit those in promoting sales of IBM
8 products and doing what it had to do, and co-translate
9 Satra's needs to IBM. Mr. Hill makes that a point, of
10 knowing how many people are in Satra. That is ridiculous.
11 What Dr. Stern is doing is looking into the future and
12 projecting what kinds of needs will arise if there is a
13 detente, what kinds of situations will arise if Russian
14 industry becomes approaching the complexity and
15 sophistication of some aspects of our industry; if govern-
16 ment policy turns that way, what can Satra do to contribute
17 to that, what might IBM want to do?

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2 He might, of course, be telling people things
3 they already knew. He might be sharpening their insights.
4 But that's what he was supposed to do; nothing more than
5 that.

6 Mr. Oztemel agrees that as relates to the
7 specific contract between Satra and IBM, Dr. Stern had
8 nothing to do. That's echoed in the agreements. These
9 things were right in front of all the people all the
10 time. The letter of intent that is between Satra and IBM
11 explicitly says that IBM can terminate if Mr. Oztemel
12 ceases to be part of Satra. It has nothing to do with
13 Dr. Stern not being part of Satra. The agreement says
14 the same thing.

15 These people knew on September 17th and again
16 on September 22nd that it was Mr. Oztemel that was indis-
17 pensable. That wasn't why they got Dr. Stern into the
18 picture. They didn't get Dr. Stern in the picture to
19 teach IBM systems management. IBM had plenty of people
20 to do systems management. Dr. Stern was there to help
21 bring about a deal. You know, it's very curious, this
22 proposal, this draft by Mr. Mott, where he was going to
23 redraft this agreement, or renegotiate the agreement. There
24 is a very interesting statement in it. This is Mr. Mott's
25 language:

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"Whereas Marvin Stern has been active and instrumental in presenting the possibility that Satra or its subsidiaries may represent International Business Machines Corporation and Stromberg-Carlson in trade with the several trade agencies of the Soviet Union, and whereby the parties want to formalize their agreement...."

Presenting the possibility of an agreement. That's what Satra was expecting from Dr. Stern, to help bring about an agreement. He did it. Satra benefited from it and they wish to renege.

Now we are told that Satra has the right to renege and we are given a whole list of reasons why they have a right to renege, the five reasons listed in the pleadings of the defendants. There were misrepresentations, and they list these five. Just as it were, a misrepresentation of a fact, as Judge Lasker, I expect, will tell you, has to do with a certain fact that's in existence that is misrepresented. It doesn't have to do with opinions and promises for the future. Each misrepresentation must be proved clearly and convincingly, and it is their burden to prove. If they fail in that burden, it's not a misrepresentation.

Misrepresentation, allegedly, No. 1: Plaintiff was influential with IBM. The statement is ridiculous.

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2 Mr. Oztemel admitted that plaintiff didn't know anybody
3 at IBM. In fact, Mr. Jones, who was the president of IBM
4 World Trade, mistook Dr. Stern for Mr. Oztemel. That's
5 how Dr. Stern was influential. He was influential in
6 persuading them. He was influential in doing the kind of
7 thing that he was hired to do. That's how he was influential.
8 There was no misrepresentation.

9 Second, that plaintiff had helped to convince
10 IBM to enter into the Soviet market. Again, it's nonsense.
11 IBM will do what IBM has to do. It's got a board of
12 directors who are paid to do just that. It's got officers
13 to do just that. If Dr. Stern is there talking about
14 possibility opportunities in the Soviet Union and that
15 helps to convince IBM, fine, but they are not going to
16 be helped where they don't want to go, and Mr. Oztemel
17 and Mr. Giffen and the others aren't babies. They know
18 that.

19 Third, the plaintiff had also convinced IBM to
20 obtain Satra or Consultant as IBM's consultants with
21 respect to its venture into the Soviet market. You have
22 heard the testimony. Dr. Stern helped along in that.
23 What was the misrepresentation? The only basis for this being
24 a misrepresentation is that Dr. Stern said that he con-
25 trolled the decision and without him there wouldn't have

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2 been a representation agreement. That's nonsense. They
3 knew that Dr. Stern didn't control IBM AND Mr. Oztemel
4 admitted as much. What Dr. Stern again did was bring the
5 parties together so that the logical relationship could
6 come out, and so that the parties could make their own
7 decision whether it was good for both or not good for both.
8 That's what Dr. Stern did and the defendants got the
9 benefit of that bargain.

10 Fourth, that IBM would retain Satra or Consultants
11 only if plaintiff were included in the project, working
12 with or for Satra or Consultant. You heard Mr. Giffen say
13 that Dr. Stern threatened him that if he didn't get an
14 agreement he would blow the deal. What does that mean?
15 Mr. Oztemel was there at every meeting in August and
16 Mr. Giffen was there at every meeting in September.' They
17 had the power to go on. Obviously they thought that Dr.
18 Stern could help them. They knew he couldn't blow the
19 deal unless he had some abilities of persuasion or some
20 other attributes to his knowledge and background that
21 Satra lacked. And if Satra felt that Dr. Stern might leave
22 and lessen Satra's chances to make the deal, it was not
23 because of any special influence that Dr. Stern had, or any
24 type of misrepresentation that Dr. Stern made, but merely
25 their own impediment.

1 rgd

2 They wanted Dr. Stern, it's very clear, but
3 after Dr. Stern delivered, they didn't want him any more.

4 Last, that plaintiff's ability in systems
5 management was a reason for IBM's requirement that plaintiff
6 be involved in the performance of the potential consultancy
7 in the representation agreement. They all say the same
8 thing.

9 They charged Dr. Stern with having IBM in his
10 hip pocket. It's a ridiculous statement to think that.
11 One of the world's largest corporations is in Dr. Stern's
12 hip pocket is a proposition I would be ashamed to advance.

13 Lastly in this series of ridiculous statements
14 we are told that this \$100,000 offer that's made by
15 Mr. Oztemel at this last meeting is something that was
16 fair and reasonable and that Dr. Stern should have accepted.
17 If Dr. Stern had a contract he was entitled to performance
18 on the contract and whatever his half share was on the
19 contract that's what he was entitled to. He wasn't entitled
20 or in need of the offer of Mr. Oztemel. He wasn't in need
21 of any further bargaining or negotiation. He was entitled
22 to his contract rights. That's what he deserved. That's
23 what he should have had. That's what was owing to him, not
24 \$100,000. The statement is an insult and the statement here
25 that this is supposed to explain everything is an insult.

1 2rgd

2 You know, we started this trial with a long
3 recitation of the background history and you have heard
4 rather harsh words used by Dr. Stern throughout. But what
5 has plainly been happening from the very beginning to the
6 very end is an effort to cheat Dr. Stern.

7 Well, maybe Mr. Oztemel doesn't think it's
8 cheating. Maybe he thinks that the world is a horse trade
9 and that everything that goes on in a courtroom or a
10 corporation or in a business deal is a horse trade.
11 Whatever you can knock up a horse for on the block, that's
12 it. If you have a piece on paper, that's a contract, that's
13 just one more element. The world is not a horse trade.
14 Truth and righteousness has to prevail. That's what courts
15 are all about and that's what juries are all about. If
16 parties make an agreement and one party uses another, he has
17 to live up to the agreement. That's what we are here before
18 you about. That's what this trial is about.

19 It's for you to judge who was the cheater,
20 Dr. Stern or Mr. Oztemel.

21 THE COURT: Ladies and gentlemen, I had hoped
22 that we might be able to go on this afternoon and that I
23 would charge you now and ask you to deliberate, but my
24 charge will take somewhere between a half to three-quarters
25 of an hour. You have listened to a fair amount of talk,

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